

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assembly Member Medina

February 22, 2013

An act to repeal and add Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, and to add ~~Title 25 (commencing with Section 200000)~~ *Chapter 6 (commencing with Section 63088)* to Division 1 of Title 6.7 to, to repeal ~~Section 200009~~ of, and to repeal and add Sections ~~200020, 200022, and 200025~~ 63089.5, 63089.63, 63089.64, and 63089.66 of, the Government Code, relating to business, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Medina. Business investments: Small Business Financial Assistance Act of 2013.

Existing law, the California Small Business Financial Development Corporation Law, creates the California Small Business Board and the California Small Business Expansion Fund, a continuously appropriated fund, which includes General Fund moneys. Existing law authorizes the formation of small business financial development corporations to grant loans from, or guarantee loans made by a financial institution or financial company, as defined, against, moneys awarded to the corporation from the expansion fund for the purpose of stimulating small business development. Existing law authorizes a director designated by the Secretary of Business, Transportation and Housing to perform specified duties under that law. A violation of certain conflict-of-interest provisions by the director and other persons, as specified, is a crime.

This bill would revise and recast these provisions, and would transfer the administration of the California Small Business Financial Development Corporation Law to the ~~Governor's Office of Business and Economic Development and an executive director~~ *California Infrastructure and Economic Development Bank and a program manager* designated by the ~~director of the office, executive director of the Infrastructure and Economic Development Bank~~, as specified. The bill would expand the definitions of “financial institution” and “financial company” for those purposes. Because the above-described conflict-of-interest provisions would apply to the director and executive director, and other officers and employees, as specified, the bill would extend the application of a crime, and impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Because this bill would expand the purposes for which a continuously appropriated fund is expended, the bill would make an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1 (commencing with Section 14000) of
2 Part 5 of Division 3 of Title 1 of the Corporations Code is repealed.

3 SEC. 2. Chapter 1 (commencing with Section 14000) is added
4 to Part 5 of Division 3 of Title 1 of the Corporations Code, to read:

5
6 CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL
7 DEVELOPMENT CORPORATIONS

8
9 Article 1. Introduction

10
11 14000. This chapter shall be known and may be cited as the
12 California Small Business Financial Development Corporation
13 Law.

14 14001. (a) It is the intent of the Legislature in enacting this
15 chapter to promote the economic development of small businesses

1 by making available capital, general management assistance, and
2 other resources, including loan and equity investment services,
3 personnel, and business education to small business entrepreneurs,
4 including women and minority owned businesses, for the purpose
5 of promoting the health, safety, and social welfare of the citizens
6 of California, to eliminate unemployment of the economically
7 disadvantaged of the state, and to stimulate economic development,
8 employment, minority group, women, and disabled persons
9 entrepreneurship.

10 (b) It is the further intent of the Legislature to provide a flexible
11 means to mobilize and commit all available and potential resources
12 in the various regions of the state to fulfill these objectives,
13 including federal, state, and local public resources, and private
14 debt and equity investment.

15 (c) It is the further intent of the Legislature that corporations
16 operating pursuant to this law, shall to the maximum extent
17 feasible, coordinate with other job and business development
18 efforts within their region directed toward implementing the
19 purpose of this part.

20 (d) It is the further intent of the Legislature to provide expanded
21 resources allowing participation by small and emerging contractors
22 in state public works contracts. Increased access to surety bonding
23 resources will assist in supporting participation by those firms in
24 public works contracts, and by stimulating increased participation
25 by small firms, the state will benefit from increased competition
26 and lower bid costs.

27 14002. If any provision of this chapter or the application thereof
28 to any person or circumstances is held invalid, this invalidity shall
29 not affect other provisions or applications of the chapter which
30 can be given effect without the invalid provision or application,
31 and to this end the provisions of this chapter are severable.

32 Article 2. Definitions

33
34
35 14003. Unless the context otherwise requires, the definitions
36 in this section shall govern the construction of this chapter.

37 (a) *“Bank board” means the board of directors of the California*
38 *Infrastructure and Economic Development Bank.*

39 (b) *“Board” means the California Small Business Board.*

40 (a)

1 (c) “Board of directors” means the board of directors of the
2 corporation.

3 ~~(b)~~

4 (d) “Corporation” means any nonprofit California small business
5 financial development corporation created pursuant to this chapter.

6 (e) “*Executive director*” means the executive director of the
7 Infrastructure and Economic Development Bank.

8 ~~(e) “Director” means the director of the Governor’s Office of
9 Business and Economic Development.~~

10 ~~(d) “Executive director” means the person designated to this
11 title by the director of the Governor’s Office of Business and
12 Economic Development.~~

13 ~~(e)~~

14 (f) “Expansion fund” means the California Small Business
15 Expansion Fund.

16 (g) “*Financial company*” means banking organizations,
17 including national banks and trust companies, savings and loan
18 associations, certified community development financial
19 institutions, microlenders, state insurance companies, mutual
20 insurance companies, and other public and private banking,
21 lending, retirement, and insurance organizations.

22 (h) “*Financial institution*” means regulated banking
23 organizations, including national banks and trust companies
24 authorized to conduct business in the state and state-chartered
25 commercial banks, trust companies, credit unions, and savings
26 and loan associations.

27 ~~(f)~~

28 (i) “Loan committee” means a committee appointed by the board
29 of directors of a corporation to determine the course of action on
30 a loan application pursuant to ~~Title 25 (commencing with Section~~
31 ~~200000) Chapter 6 (commencing with Section 63088) of Division~~
32 ~~1 of Title 6.7 of the Government Code.~~

33 (j) “*Program Manager*” means the person designated to this
34 title by the executive director of the Infrastructure and Economic
35 Development Bank.

36 ~~(g)~~

37 (k) “Trust fund” means the money from the expansion fund that
38 is held in trust by financial institution or financial company. A
39 trust fund is not a deposit of state funds and is not subject to the
40 requirements of Section 16506 of the Government Code.

~~(h)~~

(l) "Trust fund account" means an account within the trust fund that is allocated to a particular small business financial development corporation for the purpose of paying loan defaults and claims on bond guarantees for a specific small business financial development corporation.

Article 3. ~~Executive Director~~ *Program Manager*

14004. (a) The ~~executive director~~ *program manager* shall do all of the following:

~~(a)~~

(1) Administer this chapter.

~~(b) Expeditiously approve or disapprove~~

(2) *Make recommendations to the board on the approval or disapproval of* the articles of incorporation ~~and any subsequent amendments to the articles of incorporation of a corporation.~~ This determination shall be based upon the following:

~~(1)~~

(A) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this chapter.

~~(2)~~

(B) A determination as to whether the legislative intent expressed in Section 14001 shall be served by the proposed corporation.

~~(3)~~

(C) A determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation are such as to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

~~(e)~~

(3) Have the accounts of each corporation formed under this chapter audited as of the close of business on June 30 of each year.

~~(d)~~

(4) Have the portfolio of each corporation audited a minimum of once a year. Material audit exceptions that are not corrected by the corporation within a reasonable period of time may result in the suspension of the corporation pursuant to Section 63089.3 of the Government Code.

(e)

(5) Review reports from the Department of Business Oversight and inform corporations as to what corrective action is required.

(f)

(6) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

(g) ~~Attend~~

(b) *The program manager may attend and participate at corporation meetings. The ~~executive director~~, program manager, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation. The ~~executive director~~ program manager shall meet with the board of directors of each corporation at least once each fiscal year, commencing January 1, 2014.*

1404.1. (a) *The California Small Business Board is hereby continued and created as a subcommittee of the California Infrastructure and Economic Development Bank Board. The California Small Business Board consists of the following membership:*

(1) *The Director of Finance or his or her designee.*

(2) *The Director of the Office of the Small Business Advocate or his or her designee.*

(3) *The Treasurer or his or her designee.*

(4) *Two corporations selected by the corporations.*

(5) *Two members appointed by the Governor, one of whom will serve as chair of the board, who are actively involved in the California small business community.*

(b) *The California Small Business Board shall do each of the following:*

(1) *Advise the program manager on matters regarding this part and Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.*

1 (2) *Approve new corporations recommended by the program*
2 *manager, based on an examination of each of the following:*

3 (A) *Review of the articles of incorporation and bylaws of the*
4 *corporation to determine whether they contain the provisions*
5 *required by this chapter and conform with the regulations adopted*
6 *pursuant to this part.*

7 (B) *Determination as to whether the legislative intent expressed*
8 *in Section 14002 will be served by the proposed corporation.*

9 (C) *Determination as to whether the responsibility, character,*
10 *and general fitness of the individuals who will manage the*
11 *corporation are able to command the confidence of the state and*
12 *to warrant the belief that the business of the proposed corporation*
13 *will be honestly and efficiently conducted in accordance with the*
14 *intent and purpose of this chapter and that they include*
15 *representatives of the financial and business community, as well*
16 *as the economically disadvantaged.*

17 (c) *The public members of the board, at the discretion of the*
18 *bank board, may be reimbursed per diem and travel expenses*
19 *pursuant to state law.*

20 21 Article 4. New Corporations

22
23 14005. Upon approval by the ~~executive director~~ *board* to
24 become a corporation, an entity shall adopt or amend its articles
25 of incorporation to comply with the following:

26 (a) The name of the corporation shall include the words “small
27 business financial development corporation,” except for those
28 corporations formed pursuant to this chapter prior to 2002, which
29 may also be called “small business development corporations,” or
30 those formed prior to 1985, which may also be called “rural or
31 urban development corporations.”

32 (b) The purposes for which the corporation is formed, which
33 shall be those specified in Section 14001. This requirement shall
34 not be deemed to preclude a statement of powers.

35 (c) A geographical description of the corporation’s *primary*
36 *service area.*

37 (d) The name and addresses of seven or more persons who are
38 to act in the capacity of directors until the selection of their
39 successors.

(e) That the corporation is organized pursuant to the California Small Business Financial Development Corporation Law.

14006. If the ~~executive director~~ *board* determines that the facts disclosed by the investigation provided by Section 14004 are true and finds that the proposed incorporation meets all the requirements of this chapter, the ~~executive director~~ *program manager* shall approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the ~~executive director~~ *program manager* shall ~~approve or disapprove of all amendments to the articles. The executive director shall endorse the approval on the amendatory document before the document is forwarded to the Secretary of State for his or her approval and filing~~ *review all amendments to the articles to ensure consistency with the purposes of the article.*

14007. (a) The corporation's existence as a small business development corporation begins upon the filing of the articles with the Secretary of State and continues perpetually, unless otherwise expressly provided for by law.

(b) *If a corporation is suspended, the corporation may continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code), but shall no longer be registered with the Secretary of State as a small business financial development corporation. A corporation shall not enjoy any of the benefits of a small business financial development corporation following suspension.*

14008. (a) Any request for proposal for selection of a corporation shall *be approved by the bank and* require the winning bidder to adopt or amend its bylaws to include provisions governing the election and qualification of directors, the establishment and functions of loan committees of the corporation, and the method of selecting the representative of the corporation on the board.

(b) The bylaws shall provide for removal of officers only by a two-thirds vote of the directors of the corporation.

14009. Each corporation shall have provisions establishing a grievance procedure for employees, clients, or potential clients, to appeal a decision or obtain redress of an action done by the staff or loan committee of the corporation. The procedures shall be

1 established in writing during the probationary period of a new
2 corporation.

3 14010. The ~~executive director~~ *program manager* may authorize
4 the establishment of a new corporation using a request for proposal
5 process.

6 14011. The Nonprofit Public Benefit Corporation Law (Part
7 2 (commencing with Section 5110) of Division 2 of this title)
8 applies to corporations formed under this chapter, except as to
9 matters otherwise provided for in this chapter.

10 14012. For six months following the establishment of a
11 corporation, commencing upon filing of the articles of
12 incorporation with the Secretary of State, a corporation shall be
13 on probation. While on probation, a corporation may be suspended
14 if suspension is recommended by the ~~executive director~~ *program*
15 *manager*. This suspension is nonappealable and not subject to the
16 procedures for suspension applicable to a corporation not on
17 probation.

18
19 Article 5. Corporation Board
20

21 14013. The corporate powers of a corporation shall be exercised
22 by the board of directors.

23 14014. A request for proposal for selection of a corporation
24 shall require the winning bidder to adopt or amend its bylaws to
25 state that:

26 (a) A person may not serve on a board of directors who is not
27 a resident of, or person conducting business in, the service area
28 described in the articles of incorporation.

29 (b) Each board of directors shall include representatives from
30 all of the following:

31 (1) The financial community.

32 (2) The business community.

33 (3) The economically disadvantaged.

34 (c) Not more than one employee of the corporation may serve
35 on the board of directors at any one time.

36 (d) A person who has a financial interest related to a matter over
37 which the board has authority may not make, participate in making,
38 or in any way attempt to influence that matter.

39 14015. If any director ceases to meet the qualifications
40 established in Section 14014, he or she shall immediately vacate

his or her position as a director and such position shall be deemed vacant.

14016. If any vacancy occurs in the elective membership of the board of directors through death, resignation, or otherwise, the remaining directors shall elect a person representing the appropriate category to fill the vacancy for the unexpired term.

14017. (a) ~~The office California Infrastructure and Economic Development Bank~~ shall establish new small business financial development corporations pursuant to the procedures otherwise established by this ~~chapter in the following areas:~~ *chapter. In approving the request for proposal, the bank shall ensure small businesses in all areas of the state would have reasonable access to the financial programs, in which they are eligible. Establishment of a new corporation is dependent upon sufficient funding being available.*

(b) *Additional corporations have been proposed in the following areas:*

(1) San Jose.

(2) Santa Ana.

(3) San Fernando Valley.

(4) Ontario.

~~(b)~~

(c) Upon an appropriation in the annual Budget Act for this purpose, ~~the office shall~~ *California Infrastructure and Economic Development Bank shall approve the issuance of a request for a proposal to* establish a small business financial development corporation in southeast Los Angeles.

~~(e)~~

(d) In furtherance of the purposes of this chapter, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 31000) of the Financial Code.

Article 6. Corporations, Miscellaneous

14018. Every corporation shall provide for, and maintain a central staff to perform, all administrative requirements of the corporation, including all those functions required of a corporation by the director.

1 14019. Reasonable costs incurred by a corporation in the
2 creation and maintenance of a central staff shall be paid to the
3 corporation from state funds, including a portion of the interest
4 earned on the expansion fund and the corporation's trust fund
5 account, if the corporation has a trust fund account, otherwise, on
6 the expansion fund.

7 14020. A corporation shall report to the ~~executive director,~~
8 *program manager*, or his or her designated representative, all
9 statistical and other reports required by this chapter, responses to
10 audit reports, budget requirements, and other information relating
11 to the establishment, monitoring, and suspension of a corporation.

12 14021. A corporation shall make a report to the ~~executive~~
13 ~~director,~~ *program manager*, as of the close of business on June 30
14 of each year, describing the corporation's activities and any
15 additional information requested by the ~~executive director,~~ *program*
16 *manager*, on or before August 1 of each year.

17
18 Article 7. Conflict of Interest
19

20 14022. It shall be unlawful for the ~~director,~~ executive director,
21 *program manager*, or any person who is an officer, director, or
22 employee of a corporation, or who is a member of a loan
23 committee, or who is an employee of the ~~office~~ *California*
24 *Infrastructure and Economic Development Bank* to do any of the
25 following:

26 (a) Ask for, consent, or agree to receive, any commission,
27 emolument, gratuity, money, property, or thing of value for his or
28 her own use, benefit, or personal advantage, for procuring or
29 endeavoring to procure for any person, partnership, joint venture,
30 association, or corporation, any loan, guarantee, financial, or other
31 assistance from any corporation.

32 (b) Borrow money, property, or to benefit knowingly, directly
33 or indirectly, from the use of the money, credit, or property of any
34 corporation.

35 (c) Make, maintain, or attempt to make or maintain, a deposit
36 of the funds of a corporation with any other corporation or
37 association on condition, or with the understanding, expressed or
38 implied, that the corporation or association receiving the deposit
39 shall pay any money or make a loan or advance, directly or
40 indirectly, to any person, partnership, joint venture, association,

1 or corporation, other than to a corporation formed under this
2 chapter.

3 14023. It shall be unlawful for the ~~director~~, executive director,
4 *program manager*, or any person who is an officer or director of
5 a corporation, or who is an employee of the ~~office~~, *California*
6 *Infrastructure and Economic Development Bank* to purchase or
7 receive, or to be otherwise interested in the purchase or receipt,
8 directly or indirectly, of any asset of a corporation, without paying
9 to the corporation the fair market value of the asset at the time of
10 the transaction.

11 14024. Violation of any provision of this article shall constitute
12 a felony.

13 ~~SEC. 3. Title 25 (commencing with Section 200000) is added~~
14 ~~to the Government Code, to read:~~

15
16 ~~TITLE 25. SMALL BUSINESS FINANCIAL ASSISTANCE~~
17 ~~ACT OF 2013~~
18

19 ~~CHAPTER 1. INTRODUCTION~~
20

21 ~~200000. This title shall be known and may be cited as the Small~~
22 ~~Business Financial Assistance Act of 2013.~~

23 ~~200001. The Legislature finds that:~~

24 ~~(a) Small businesses form the core of the California economy~~
25 ~~and that it is in the interest of the state to increase opportunities~~
26 ~~for entrepreneurs, the self-employed, and microbusiness and small~~
27 ~~business owners to have better access to capital and other technical~~
28 ~~resources.~~

29 ~~(b) Unemployment in California is a matter of statewide concern~~
30 ~~requiring concerted public and private action to develop~~
31 ~~employment opportunities for the disadvantaged, youth, veterans,~~
32 ~~and unemployed persons.~~

33 ~~(c) It is necessary to direct additional capital, general~~
34 ~~management assistance, business education, and other resources~~
35 ~~to encourage the development of small business opportunities,~~
36 ~~particularly for minority, women, and disabled persons, to alleviate~~
37 ~~unemployment.~~

CHAPTER 2. DEFINITIONS

~~200002. Unless the context otherwise requires, the definitions in this section shall govern the construction of this title.~~

~~(a) “Corporation” means any nonprofit California small business financial development corporation created pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.~~

~~(b) “Director” means the director of the Governor’s Office of Business and Economic Development.~~

~~(c) “Employment incentive loan” means a loan to a qualified business or to a business located within an enterprise zone, as defined in subdivision (d) of Section 7072.~~

~~(d) “Executive director” means the person designated to this title by the director of the Governor’s Office of Business and Economic Development.~~

~~(e) “Expansion fund” or “expansion fund” means the California Small Business Expansion Fund.~~

~~(f) “Financial company” means banking organizations, including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other public and private banking, lending, retirement, and insurance organizations.~~

~~(g) “Financial institution” means banking organizations, including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, community development financial institutions, microlenders, and savings and loan associations.~~

~~(h) “Loan committee” means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to this title.~~

~~(i) “Office” means the Governor’s Office of Business and Economic Development.~~

~~(j) Unless otherwise defined by the director by regulation, “small business loan” means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director shall provide guidelines as to the preferred ratio of jobs~~

1 ~~created or retained to total funds borrowed for guidance to the~~
2 ~~corporations.~~

3 ~~(k) “Trust fund” means the money from the expansion fund that~~
4 ~~is held in trust by a financial institution or financial company. A~~
5 ~~trust fund is not a deposit of state funds and is not subject to the~~
6 ~~requirements of Section 16506.~~

7 ~~(l) “Trust fund account” means an account within the trust fund~~
8 ~~that is allocated to a particular small business financial~~
9 ~~development corporation for the purpose of paying loan defaults~~
10 ~~and claims on bond guarantees for a specific small business~~
11 ~~financial development corporation.~~

12 ~~(m) “Trustee” means the lending institution or financial company~~
13 ~~selected by the office to hold and invest the trust funds. An~~
14 ~~agreement made pursuant to this title and the trustee shall not be~~
15 ~~construed to be a deposit of state funds.~~

16
17 ~~CHAPTER 3. PROGRAM PURPOSE~~
18

19 ~~200003. (a) There is within the Governor’s Office of Business~~
20 ~~and Economic Development the California Business Investment~~
21 ~~Service, which shall, among other things, assist businesses seeking~~
22 ~~new capital resources.~~

23 ~~(b) Pursuant to this title, the office may establish one or more~~
24 ~~programs administered regionally under contract with small~~
25 ~~business financial development corporations. Programs established~~
26 ~~pursuant to this title may include the following types of financial~~
27 ~~products:~~

28 ~~(1) Loan guarantees.~~

29 ~~(2) Direct loans.~~

30 ~~(3) Disaster assistance loans.~~

31 ~~(4) Surety bond guarantees.~~

32 ~~(c) In all of their state-funded programs, the corporations shall,~~
33 ~~to the extent practicable, be complementary to, and not competitive~~
34 ~~with, commercial lenders and other state and federal programs.~~

35 ~~200004. To implement its responsibilities, a corporation shall~~
36 ~~undertake a program that shall include, but not be limited to, the~~
37 ~~following:~~

38 ~~(a) Outreach to low-resource small businesses and~~
39 ~~microbusinesses. The corporations located in rural areas shall give~~

1 priority to low-resource farmers, rural, and agriculturally related
2 businesses:

3 (b) ~~Collaboration with other organizations and lenders to identify~~
4 ~~and assist those businesses that are creditworthy but face~~
5 ~~impediments to accessing conventional sources because of reasons,~~
6 ~~such as low equity, inadequate collateral, unacceptable legal~~
7 ~~structure (such as a co-op or nonprofit organization), management~~
8 ~~inadequacies, and language problems.~~

9 (c) ~~To the extent possible, bringing all possible financial~~
10 ~~resources (low-interest lenders, BIDCOs, MESBICs, other~~
11 ~~guarantors, etc.) to bear on the borrower's problems.~~

12 (d) ~~Technical assistance to businesses receiving loans or~~
13 ~~guarantees that will maximize the probability of loan repayment.~~

14 (e) ~~Ongoing strategies for increasing program resources through~~
15 ~~private sector involvement and nonstate funds.~~

16 (f) ~~A program for collecting and liquidating defaulted loans so~~
17 ~~that the corporations can qualify to become full-service lenders~~
18 ~~under the Small Business Administration. Corporations located in~~
19 ~~rural areas shall, in addition, try to qualify for lender status under~~
20 ~~the Farmers Home Administration.~~

21 (g) ~~Become an agent for other lenders and guarantors.~~

22
23 CHAPTER 4. ADMINISTRATIVE STRUCTURE
24

25 200005. ~~If regulations have not already been adopted under~~
26 ~~Chapter 1 (commencing with Section 14000) of Part 5 of Division~~
27 ~~3 of Title 1 of the Corporations Code, as that chapter read on~~
28 ~~January 1, 2013, then the office shall adopt regulations concerning~~
29 ~~the implementation of this title, Chapter 1 (commencing with~~
30 ~~Section 14000) of Part 5 of Division 3 of Title 1 of the~~
31 ~~Corporations Code, and direct lending as emergency regulations~~
32 ~~in accordance with Chapter 3.5 (commencing with Section 11340)~~
33 ~~of Part 1 of Division 3 of Title 2. The adoption of these regulations~~
34 ~~is an emergency and necessary for the immediate preservation of~~
35 ~~the public peace, health and safety, or general welfare within the~~
36 ~~meaning of subdivision (b) of Section 11346.1. Notwithstanding~~
37 ~~subdivision (c) of Section 11346.1, the regulations shall not remain~~
38 ~~in effect for more than 180 days unless the office complies with~~
39 ~~all provisions of Chapter 3.5 (commencing with Section 11340)~~
40 ~~of Part 1 of Division 3 of Title 2, as required by subdivision (c) of~~

~~Section 11346.1. This section also applies to any direct loan program administered by the office.~~

~~200006. The executive director shall do all of the following:~~

~~(a) Administer this title.~~

~~(b) Contract for services under this title and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.~~

~~(c) In accordance with available resources, use branch offices for the purposes of making the programs under this title accessible to all areas of the state.~~

~~(d) Require each corporation to submit an annual written plan of operation.~~

~~(e) Authorize the distribution, transfer, and withholding of moneys in the expansion fund and trust funds.~~

~~(f) Authorize the investment of expansion and trust fund moneys.~~

~~(g) Oversee the operations of one or more programs authorized pursuant to this title.~~

~~(h) Approve, suspend, or terminate a corporation's ability to participate in a program under this title.~~

~~(i) Advise the Governor, the director, and the Small Business Advocate regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.~~

~~200007. The use of state funds paid out to the trust fund and the return on those funds from investment pursuant to Section 200014 is conditional pursuant to Sections 200008 and 200015. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year. The agreement shall govern the activities in which the corporations engage, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur. In the event the state and corporation do not reach an agreement, or the state finds the corporation has violated the terms of an active agreement, the state may take any action under Section 200008 or 200015, or any other action as appropriate. In the event the state and corporation do not reach agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the~~

1 trust fund or the return of those funds by the issuance of guarantees;
2 by incurring expenses against the fund and its return in any manner
3 whatsoever, and the state may take any action under Section
4 200008 or 200015, or any other action as appropriate. Any
5 guarantee or other encumbrance made by the corporation in
6 violation of this section shall be null and void, and neither the state
7 nor the trust fund will be liable therefor.

8 200008. (a) Upon a finding by the executive director that
9 irreparable harm may occur if guarantee or direct loan authority
10 is not temporarily withdrawn from a corporation, the executive
11 director may temporarily withdraw guarantee or direct loan, or
12 both, authority from a corporation. The notice of temporary
13 withdrawal sent to the corporation shall specify the reasons for the
14 action.

15 (1) As used in this section, “guarantee and direct loan authority”
16 means the authority to make or guarantee any loan that encumbers
17 funds in a trust fund account, any account or subaccount under the
18 direct control of the office or other state entity, or the expansion
19 fund.

20 (2) The executive director shall make one of the determinations
21 specified in subdivision (c) within 30 days of the effective date of
22 the temporary withdrawal, unless the corporation and the executive
23 director mutually agree to an extension. The corporation shall have
24 the opportunity to submit written material to the executive director
25 addressing the items stated in the temporary withdrawal notice. If
26 the executive director does not make any determinations within
27 30 days, the temporary withdrawal shall be negated. The
28 corporation’s yearly contract shall remain in effect during the
29 period of temporary withdrawal, and the corporation shall continue
30 to receive reimbursement of necessary operating expenses.

31 (b) Failure of a corporation to substantially comply with the
32 following may result in the suspension of a corporation:

33 (1) Regulations implementing the California Small Business
34 Development Corporation Law (Chapter 1 (commencing with
35 Section 14000) of Part 5 of Division 3 of Title 1 of the
36 Corporations Code).

37 (2) Fiscal and portfolio requirements, as contained in the fiscal
38 and portfolio audits specified in Section 14004 of the Corporations
39 Code.

~~(3) Milestones and scope of work as contained in the annual contract between the corporation and the office.~~

~~(e) Pursuant to subdivision (a) or (b), the executive director may do the following:~~

~~(1) Terminate the temporary withdrawal.~~

~~(2) Terminate the temporary withdrawal subject to the corporation's adoption of a specified remedial action plan.~~

~~(3) Temporarily withdraw, or continue to withdraw, guarantee authority until a specified time. This determination by the executive director shall require a finding that the corporation has failed to comply with the California Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code).~~

~~(4) Suspend the corporation.~~

~~(5) Suspend the corporation, with suspension stayed until the corporation provides a remedial action plan to the executive director, and the executive director decides whether to repeal or implement the stayed suspension.~~

~~(d) The determinations contained in paragraphs (4) and (5) of subdivision (e) require a finding that irreparable harm will occur unless the corporation is suspended.~~

~~(e) In considering a determination regarding the recommended suspension and possible remedial action plans, the executive director shall consider, along with other criteria as specified in subdivision (b), the corporation's history and past performance.~~

~~(f) Upon suspension of a corporation, the executive director shall transfer all funds, whether encumbered or not, in the trust fund account of the suspended corporation into either the expansion fund or temporarily transfer the funds to another corporation.~~

~~(g) If the executive director decides to take any action against the corporation pursuant to paragraphs (2) to (5), inclusive, of subdivision (e), the corporation shall be notified of the action 10 days before the effective date of the action. The corporation shall have the right to appeal the executive director's decision to the director within that 10-day period by sending notice to the director. Once the director receives notice that the action is being appealed, the executive director's action shall be stayed except for temporary withdrawal of guarantee authority. Upon receipt of the notice, the director shall consider and make a final determination on the appeal within 30 days. The director may elect to take any of the actions~~

1 listed in subdivision (h). The temporary withdrawal of corporation
2 guarantee authority shall remain in effect until the director issues
3 a decision.

4 (h) Pursuant to subdivision (g), the director may do any of the
5 following:

6 (1) Terminate the action taken by the executive director.

7 (2) Modify the action taken by the executive director subject to
8 the adoption by the corporation of a specified remedial action plan.

9 (3) Affirm the action taken by the executive director.

10 (i) Following suspension, the corporation may continue its
11 existence as a nonprofit corporation pursuant to the Nonprofit
12 Public Benefit Corporation Law (Part 2 (commencing with Section
13 5110) of Division 2 of Title 1 of the Corporations Code), but shall
14 no longer be registered with the Secretary of State as a small
15 business financial development corporation. A corporation shall
16 not enjoy any of the benefits of a small business financial
17 development corporation following suspension.

18 (j) The funds in the trust fund account of a corporation under
19 temporary withdrawal shall be transferred to the expansion fund.
20 Upon termination of the temporary withdrawal, unless the
21 termination is caused by suspension, the funds of the corporation
22 that were transferred to the expansion fund from the trust fund
23 account shall be returned to the corporation's trust fund account,
24 notwithstanding Section 200011. While the funds of a corporation's
25 trust fund account reside in the expansion fund, use of the principal
26 on the funds shall be governed by the implementing regulations
27 specifying use of funds in the expansion fund. Interest on the funds
28 moved from a corporation's trust fund account upon temporary
29 withdrawal shall be limited to payment of the corporation's
30 administrative expenses, as contained in the contract between the
31 corporation and the state pursuant to this title.

32
33 CHAPTER 5. EXPANSION FUND
34

35 200009. (a) There is hereby continued in existence in the State
36 Treasury the California Small Business Expansion Fund. All or a
37 portion of the funds in the expansion fund may be paid out, with
38 the approval of the Department of Finance, to a lending institution
39 or financial company that will act as trustee of the funds.

~~(b) The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to this title, surety bond losses, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee.~~

~~(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government money, and other public or private money to make loans, guarantees, and restricted investments pursuant to this title.~~

~~(d) One or more accounts may be created by the executive director for corporations participating in one or more programs authorized under this title. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation.~~

~~(e) The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.~~

~~(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~200009.5. (a) All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years, for the purposes of this title.~~

~~(b) Except as specified in subdivision (a) of Section 200011, the state shall not be liable or obligated in any way beyond the state money that is allocated in the expansion fund from moneys from the General Fund moneys appropriated for such purposes.~~

~~200010. (a) The executive director at his or her discretion, with the approval of the Director of Finance, may request the trustee to invest those funds in the trust fund in any of the securities described in Section 16430. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this title.~~

~~(b) Any investments made in securities described in Section 16430 shall be governed by the statement of investment policy~~

1 prepared by the Treasurer pursuant to subdivision (a) of Section
2 16481.2.

3 ~~200011. (a) The state shall not be liable or obligated in any~~
4 ~~way beyond the money that is allocated and deposited in the~~
5 ~~corporation's trust fund account.~~

6 ~~(b) The executive director may reallocate funds held within a~~
7 ~~corporation's trust fund account.~~

8 ~~(1) The executive director shall reallocate funds based on which~~
9 ~~corporation is most effectively using its guarantee funds. If funds~~
10 ~~are withdrawn from a less effective corporation as part of a~~
11 ~~reallocation, the executive director shall make that withdrawal~~
12 ~~only after giving consideration to that corporation's fiscal solvency,~~
13 ~~its ability to honor loan guarantee defaults, and its ability to~~
14 ~~maintain a viable presence within the region it serves. Reallocation~~
15 ~~of funds shall occur no more frequently than once per fiscal year.~~
16 ~~Any decision made by the executive director pursuant to this~~
17 ~~subdivision may be appealed to the director. The director has~~
18 ~~authority to repeal or modify any decision to reallocate funds.~~

19 ~~(2) The executive director may authorize a corporation to exceed~~
20 ~~the leverage ratio specified in Section 200009 or subdivision (a)~~
21 ~~of Section 200025, or subdivision (c) of Section 14017 of the~~
22 ~~Corporations Code, pending the annual reallocation of funds~~
23 ~~pursuant to this section. However, no corporation shall be permitted~~
24 ~~to exceed an outstanding guarantee liability of more than five times~~
25 ~~its portion of funds on deposit in the expansion fund.~~

26 ~~200012. (a) There is hereby created in the State Treasury the~~
27 ~~Small Business Disaster Recovery Loan Loss Reserve Account,~~
28 ~~as part of the expansion fund. This account shall be used to pay~~
29 ~~for unrecovered losses resulting from loan guarantees issued~~
30 ~~pursuant to subdivision (a) of Section 200030 or subdivision (b)~~
31 ~~of this section, and disaster loan guarantees issued prior to the~~
32 ~~effective date of this section that are in default.~~

33 ~~(b) Any lending institution that issues a low-interest loan that~~
34 ~~is guaranteed by resources in this account shall be fully reimbursed~~
35 ~~for the guaranteed portion of principal and interest that result from~~
36 ~~a loan or loans that are in default. If there are insufficient funds in~~
37 ~~this account to fully satisfy all claimants, the full faith of the~~
38 ~~resources in the General Fund are pledged to satisfy the obligations~~
39 ~~of this account. This account may only guarantee as much loan~~
40 ~~dollar value as is specifically authorized by the Director of Finance~~

1 with the concurrence of the Governor. This account shall receive
2 all moneys transferred pursuant to Section 200013, and any
3 unencumbered balances transferred to the California Small
4 Business Expansion Fund pursuant to Chapters 11 and 12 of the
5 First Extraordinary Session of the Statutes of 1989, and Chapter
6 1525 of the Statutes of 1990, as of July 1, 1992.

7 (e) The Governor may utilize this authority to prevent business
8 insolvencies and loss of employment in an area affected by a state
9 of emergency within the state and declared a disaster by the
10 President of the United States, by the Administrator of the United
11 States Small Business Administration, or by the United States
12 Secretary of Agriculture, or declared to be in a state of emergency
13 by the Governor of California.

14 200013. The Director of Finance, with the approval of the
15 Governor, may transfer moneys in the Special Fund for Economic
16 Uncertainties to the California Small Business Expansion Fund
17 for use as authorized by the director, in an amount necessary to
18 make loan guarantees pursuant to this title.

19 200014. (a) The funds in the expansion fund shall be paid out
20 to trust fund accounts by the Treasurer on warrants drawn by the
21 Controller and requisitioned by the executive director, pursuant
22 to the purposes of this title. The executive director may transfer
23 funds allocated from the expansion fund to accounts, established
24 solely to receive the funds, in lending institutions designated by
25 the office to act as trustee. The lending institutions so designated
26 shall be approved by the state for the receipt of state deposits.
27 Interest earned on the trust fund accounts in lending institutions
28 may be utilized by the corporations pursuant to the purposes of
29 this title.

30 (b) Except as specified in subdivision (d), the executive director
31 shall allocate and transfer money to trust fund accounts based on
32 performance-based criteria. The criteria shall include, but not be
33 limited to, the following:

34 (1) The default record of the corporation.

35 (2) The number and amount of loans guaranteed by a
36 corporation.

37 (3) The number and amount of loans made by a corporation if
38 state funds were used to make those loans.

39 (4) The number and amount of surety bonds guaranteed by a
40 corporation.

1 ~~(e) Any decision made by the executive director pursuant to~~
2 ~~subdivision (b) may be appealed to the director within 15 days of~~
3 ~~notice of the proposed action. The director may repeal or modify~~
4 ~~any reallocation and transfer decisions made by the executive~~
5 ~~director.~~

6 ~~(d) The criteria specified in subdivision (b) shall not apply to a~~
7 ~~corporation that has been in existence for five years or less. If not~~
8 ~~already adopted, the office shall develop regulations specifying~~
9 ~~the basis for transferring account funds to those corporations that~~
10 ~~have been in existence for five years or less.~~

11 ~~200015. Pursuant to this section and any regulations adopted~~
12 ~~pursuant to this title, the state has residual interest in the funds~~
13 ~~deposited by the state to a trust fund account and to the return on~~
14 ~~these funds from investments. On dissolution or suspension of the~~
15 ~~corporation, these funds shall be withdrawn by the executive~~
16 ~~director from the trust fund account and returned to the expansion~~
17 ~~fund or temporarily transferred to another trust fund account. This~~
18 ~~provision shall be contained in the trust instructions to the trustee.~~

19 ~~200016. Each trust fund account shall consist of a loan~~
20 ~~guarantee account, and, upon recommendation by the executive~~
21 ~~director, a bond guarantee account, each of which is a legally~~
22 ~~separate account, and the assets of one account shall not be used~~
23 ~~to satisfy loan guarantees or other obligations of another~~
24 ~~corporation. Not more than one-third of a trust fund account shall~~
25 ~~be allocated to a bond guarantee account. A corporation shall not~~
26 ~~use trust fund accounts to secure a corporate indebtedness. State~~
27 ~~funds deposited in the trust fund accounts, with the exception of~~
28 ~~guarantees established pursuant to this title, shall not be subject~~
29 ~~to liens or encumbrances of the corporation or its creditors.~~

30 ~~200017. (a) The financial institution that is to act as trustee of~~
31 ~~the trust fund shall be designated after review by the executive~~
32 ~~director. The corporation shall not receive money on deposit to~~
33 ~~support guarantees issued under this title without the approval of~~
34 ~~the executive director.~~

35 ~~(b) State funds may not be used to finance an expense incurred~~
36 ~~by a corporation in a location not approved pursuant to a statewide~~
37 ~~plan. The prohibition against use of state funds also applies to the~~
38 ~~location of satellite offices, and the area served from a corporation~~
39 ~~office.~~

CHAPTER 6. GUARANTEE PROGRAM

200018. (a) The Small Business Loan Guarantee Program, which is hereby continued in existence, shall provide guarantees to loans offered by financial institutions to small businesses.

(b) The Legislature finds and declares that the Small Business Loan Guarantee Program has enabled participating small businesses that do not qualify for conventional business loans or Small Business Administration loans to secure funds to expand their businesses. These small businesses would not have been able to expand their businesses in the absence of the program. The program has also provided valuable technical assistance to small businesses to ensure growth and stability. The study commissioned by former Section 14069.6 of the Corporations Code, as added by Chapter 919 of the Statutes of 1997, documented the return on investment of the program and the need for its services. The value of the program has also been recognized by the Governor through proposals contained in the May Revision to the Budget Act of 2000 for the 2000–01 fiscal year.

200019. The executive director, following notification to the director, may do all of the following:

- (a) Contract for services entered into pursuant to this title.
- (b) Hold public hearings.
- (c) Act as liaison between corporations, other state and federal agencies, lenders, and the Legislature.
- (d) Process and tabulate on a monthly basis all corporate reports.
- (e) Attend board meetings.
- (f) Attend and participate at corporation meetings. The executive director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation. The executive director shall meet with the board of directors of each corporation at least once each fiscal year.
- (g) Assist corporations in applying for public and private funding opportunities, and in obtaining program support from the business community.

200020. (a) The executive director shall recommend whether the expansion fund and trust fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the executive director's decision may be repealed or modified by an office resolution.

1 ~~(b) The amount of guarantee liability outstanding at any one~~
2 ~~time shall not exceed five times the amount of funds on deposit in~~
3 ~~the expansion fund plus any receivables due from funds loaned~~
4 ~~from the expansion fund to another fund in state government as~~
5 ~~directed by the Department of Finance pursuant to a statute enacted~~
6 ~~by the Legislature, including each of the trust fund accounts within~~
7 ~~the trust fund.~~

8 ~~(c) This section shall remain in effect only until January 1, 2018,~~
9 ~~and as of that date is repealed, unless a later enacted statute, that~~
10 ~~is enacted before January 1, 2018, deletes or extends that date.~~

11 ~~200020. (a) The executive director shall recommend whether~~
12 ~~the expansion fund and trust fund accounts are to be leveraged,~~
13 ~~and if so, by how much. Upon the request of the corporation, the~~
14 ~~executive director's decision may be repealed or modified by an~~
15 ~~office resolution.~~

16 ~~(b) The amount of guarantee liability outstanding at any one~~
17 ~~time shall not exceed four times the amount of funds on deposit~~
18 ~~in the expansion fund plus any receivables due from funds loaned~~
19 ~~from the expansion fund to another fund in state government as~~
20 ~~directed by the Department of Finance pursuant to a statute enacted~~
21 ~~by the Legislature, including each of the trust fund accounts within~~
22 ~~the trust fund, unless the executive director has permitted a higher~~
23 ~~leverage ratio for an individual corporation pursuant to subdivision~~
24 ~~(b) of Section 200011.~~

25 ~~(c) This section shall become operative on January 1, 2018.~~

26 ~~200022. (a) The corporate guarantee shall be backed by funds~~
27 ~~on deposit in the corporation's trust fund account, or by receivables~~
28 ~~due from funds loaned from the corporation's trust fund account~~
29 ~~to another fund in state government, as directed by the Department~~
30 ~~of Finance pursuant to a statute enacted by the Legislature.~~

31 ~~(b) Loan guarantees shall be secured by a reserve of at least 20~~
32 ~~percent to be determined by the executive director.~~

33 ~~(c) The expansion fund and trust fund accounts shall be used~~
34 ~~exclusively to guarantee obligations and pay the administrative~~
35 ~~costs of the corporations.~~

36 ~~(d) This section shall remain in effect only until January 1, 2018,~~
37 ~~and as of that date is repealed, unless a later enacted statute, that~~
38 ~~is enacted before January 1, 2018, deletes or extends that date.~~

39 ~~200022. (a) The corporate guarantee shall be backed by funds~~
40 ~~on deposit in the corporation's trust fund account, or by receivables~~

1 due from funds loaned from the corporation's trust fund account
2 to another fund in state government, as directed by the Department
3 of Finance pursuant to a statute enacted by the Legislature.

4 (b) ~~Loan guarantees shall be secured by a reserve of at least 25~~
5 ~~percent to be determined by the executive director, unless the~~
6 ~~executive director authorizes a higher leverage ratio for an~~
7 ~~individual corporation pursuant to subdivision (b) of Section~~
8 ~~200011.~~

9 (c) ~~The expansion fund and trust fund accounts shall be used~~
10 ~~exclusively to guarantee obligations and pay the administrative~~
11 ~~costs of the corporations.~~

12 (d) ~~This section shall become operative on January 1, 2018.~~

13 ~~200024. A corporation may charge the borrower or financial~~
14 ~~institution a loan fee on all loans made or guaranteed by the~~
15 ~~corporation to defray the operating expenses of the corporation.~~
16 ~~The amount of the fee shall be determined by the executive~~
17 ~~director.~~

18 ~~200025. (a) It is the intent of the Legislature that the~~
19 ~~corporations make maximal use of their statutory authority to~~
20 ~~guarantee loans and surety bonds, including the authority to secure~~
21 ~~loans with a minimum loan loss reserve of only 20 percent, so that~~
22 ~~the financing needs of small business may be met as fully as~~
23 ~~possible within the limits of corporations' loan loss reserves. The~~
24 ~~office shall report annually to the Legislature on the financial status~~
25 ~~of the corporations and their portfolio of loans and surety bonds~~
26 ~~guaranteed pursuant to Section 9795.~~

27 (b) ~~Any corporation that serves an area declared to be in a state~~
28 ~~of emergency by the Governor or a disaster area by the President~~
29 ~~of the United States, the Administrator of the United States Small~~
30 ~~Business Administration, or the United States Secretary of~~
31 ~~Agriculture shall increase the portfolio of loan guarantees where~~
32 ~~the dollar amount of the loan is less than one hundred thousand~~
33 ~~dollars (\$100,000), so that at least 15 percent of the dollar value~~
34 ~~of loans guaranteed by the corporation is for those loans. The~~
35 ~~corporation shall comply with this requirement within one year of~~
36 ~~the date the emergency or disaster is declared. Upon application~~
37 ~~of a corporation, the executive director may waive or modify the~~
38 ~~rule for the corporation if the corporation demonstrates that it made~~
39 ~~a good faith effort to comply and failed to locate lending~~

1 institutions in the region that the corporation serves that are willing
2 to make guaranteed loans in that amount.

3 (e) ~~This section shall remain in effect only until January 1, 2018,~~
4 ~~and as of that date is repealed, unless a later enacted statute, that~~
5 ~~is enacted before January 1, 2018, deletes or extends that date.~~

6 ~~200025. (a) It is the intent of the Legislature that the~~
7 ~~corporations make maximal use of their statutory authority to~~
8 ~~guarantee loans and surety bonds, including the authority to secure~~
9 ~~loans with a minimum loan loss reserve of only 25 percent, unless~~
10 ~~the office authorizes a higher leverage ratio for an individual~~
11 ~~corporation pursuant to subdivision (b) of Section 200011, so that~~
12 ~~the financing needs of small business may be met as fully as~~
13 ~~possible within the limits of corporations' loan loss reserves. The~~
14 ~~office shall report annually to the Legislature on the financial status~~
15 ~~of the corporations and their portfolio of loans and surety bonds~~
16 ~~guaranteed pursuant to Section 9795.~~

17 ~~(b) Any corporation that serves an area declared to be in a state~~
18 ~~of emergency by the Governor or a disaster area by the President~~
19 ~~of the United States, the Administrator of the United States Small~~
20 ~~Business Administration, or the United States Secretary of~~
21 ~~Agriculture shall increase the portfolio of loan guarantees where~~
22 ~~the dollar amount of the loan is less than one hundred thousand~~
23 ~~dollars (\$100,000), so that at least 15 percent of the dollar value~~
24 ~~of loans guaranteed by the corporation is for those loans. The~~
25 ~~corporation shall comply with this requirement within one year of~~
26 ~~the date the emergency or disaster is declared. Upon application~~
27 ~~of a corporation, the executive director may waive or modify the~~
28 ~~rule for the corporation if the corporation demonstrates that it made~~
29 ~~a good faith effort to comply and failed to locate lending~~
30 ~~institutions in the region that the corporation serves that are willing~~
31 ~~to make guaranteed loans in that amount.~~

32 ~~(c) This section shall become operative on January 1, 2018.~~

33 ~~200026. (a) A corporation shall establish one or more loan~~
34 ~~committees, each of which shall be composed of five or more~~
35 ~~persons, a majority of whom shall be experienced in banking and~~
36 ~~lending operations.~~

37 ~~(b) A loan committee shall review applications to the corporation~~
38 ~~for a loan or guarantee and shall do each of the following:~~

39 ~~(1) Determine the feasibility of the proposed transaction. The~~
40 ~~loan committee shall recommend approval of the application only~~

1 upon a determination that there is a reasonable chance that the loan
2 will be repaid.

3 ~~(2) On the basis of that determination, recommend to the board~~
4 ~~of directors any action that the loan committee deems appropriate~~
5 ~~under the circumstances, or, in the event that approval authority~~
6 ~~has been delegated to the loan committee by the board of directors,~~
7 ~~approve or disapprove the loan application.~~

8 ~~(c) A loan committee shall expeditiously act to accept or reject~~
9 ~~loan applications.~~

10 ~~(d) A person who has a financial interest related to a matter over~~
11 ~~which the loan committee has authority may not make, participate~~
12 ~~in making, or in any way attempt to influence that matter.~~

13 ~~200027. Unless delegated to its loan committee, the~~
14 ~~corporation's board of directors, upon a recommendation from its~~
15 ~~loan committee shall do all of the following:~~

16 ~~(a) Emphasize consideration to applications that will increase~~
17 ~~employment of disadvantaged, disabled, or unemployed persons,~~
18 ~~or increase employment of youth residing in areas of high youth~~
19 ~~unemployment and high youth delinquency.~~

20 ~~(b) Give consideration to applications from traditional and~~
21 ~~safety-net providers of Medi-Cal services that will promote access~~
22 ~~to quality medical care for individuals enrolled in Medi-Cal~~
23 ~~managed health care networks that are contracting with or owned~~
24 ~~or operated by a county board of supervisors, a county health~~
25 ~~commission, or a county health authority organized pursuant to~~
26 ~~Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or~~
27 ~~14087.9605 of the Welfare and Institutions Code.~~

28 ~~(c) Not grant a loan or guarantee, unless it determines that the~~
29 ~~conditions of Section 200033 are satisfied.~~

30 ~~200028. (a) Among other priorities, corporations shall give~~
31 ~~high priority to the issuance of loan guarantees to small business~~
32 ~~incubators, and to businesses that lease space in incubators.~~

33 ~~(b) For the purposes of this section, "incubator" means a facility~~
34 ~~that allows new small businesses to increase their probability of~~
35 ~~success by sharing needed capital equipment, services, and~~
36 ~~facilities, which may include, but is not limited to, the following:~~

37 ~~(1) Reception and meeting area.~~

38 ~~(2) Secretarial services, such as collating, telephone answering,~~
39 ~~or mailhandling.~~

40 ~~(3) Accounting and bookkeeping services.~~

- 1 ~~(4) Research libraries.~~
2 ~~(5) Onsite financial and management counseling.~~
3 ~~(6) Parking.~~
4 ~~(7) Flexible lease arrangements for flexible space.~~
5 ~~(8) Computer or word processing facilities.~~
6 ~~(9) Day care facilities.~~
7 ~~(10) Office furniture rentals.~~
8 ~~(11) A graduation policy sometimes requiring firms to leave~~
9 ~~after three to five years in a subsidized, nurturing environment.~~
10 ~~(12) Employee training and placement services.~~
11 ~~(e) Among other priorities, corporations shall give high priority~~
12 ~~to marketing their services to Phase 1 or Phase 2 Small Business~~
13 ~~Innovation Research (SBIR) recipients and providing loan~~
14 ~~guarantees, whenever possible.~~

15
16 CHAPTER 7. DIRECT LENDING
17

18 200029. ~~(a) A corporation may utilize funds for direct lending~~
19 ~~as long as at least 80 percent of the corporate funds, calculated by~~
20 ~~dollar amount, and all expansion funds are guaranteed by another~~
21 ~~public or private financial institution.~~

22 ~~(b) The amount of funds available for direct lending shall be~~
23 ~~determined by the executive director. In its capacity as a direct~~
24 ~~lender, the corporation may sell in the secondary market the~~
25 ~~guaranteed portion of each loan so as to raise additional funds for~~
26 ~~direct lending. The office shall issue regulations governing these~~
27 ~~direct loans, including the maximum amount of these loans.~~

28 ~~(c) To execute the direct loan programs established in this~~
29 ~~chapter, the executive director may loan trust funds to a corporation~~
30 ~~located in a rural area for the express purpose of lending those~~
31 ~~funds to an identified borrower. The loan authorized by the~~
32 ~~executive director to the corporation shall be on terms similar to~~
33 ~~the loan between the corporation and the borrower.~~

34 ~~(d) The amount of the loan may be in excess of the amount of~~
35 ~~a loan to any individual borrower, but actual disbursements~~
36 ~~pursuant to the office loan agreement shall be required to be~~
37 ~~supported by a loan agreement between the borrower and the~~
38 ~~corporation in an amount at least equal to the requested~~
39 ~~disbursement. The loan between the office and the corporation~~
40 ~~shall be evidenced by a credit agreement. In the event that any~~

1 loan between the corporation and borrower is not guaranteed by
2 a governmental agency, the portion of the credit agreement
3 attributable to that loan shall be secured by assignment of any note,
4 executed in favor of the corporation by the borrower to the office.
5 The terms and conditions of the credit agreement shall be similar
6 to the loan agreement between the corporation and the borrower,
7 which shall be collateralized by the note between the corporation
8 and the borrower.

9 (e) In the absence of fraud on the part of the corporation, the
10 liability of the corporation to repay the loan to the office is limited
11 to the repayment received by the corporation from the borrower,
12 except in a case where the United States Department of Agriculture
13 requires exposure by the corporation in rule or regulation. The
14 corporation may use trust funds for loan repayment to the office
15 if the corporation has exhausted a loan loss reserve created for this
16 purpose. Interest and principal received by the office from the
17 corporation shall be deposited into the same account from which
18 the funds were originally borrowed.

19 (f) Upon the approval of the executive director, a corporation
20 shall be authorized to borrow trust funds from the office for the
21 purpose of relending those funds to small businesses. A corporation
22 shall demonstrate to the executive director that it has the capacity
23 to administer a direct loan program, and has procedures in place
24 to limit the default rate for loans to startup businesses. Not more
25 than 25 percent of any trust fund account shall be used for the
26 direct lending established pursuant to this subdivision. A loan to
27 a corporation shall not exceed the amount of funds likely to be
28 lent to small businesses within three months following the loan to
29 the corporation.

30 (g) The maximum loan amount to a small business is fifty
31 thousand dollars (\$50,000). In the absence of fraud on the part of
32 the corporation, the repayment obligation pursuant to the loan to
33 the corporation shall be limited to the amount of funds received
34 by the corporation for the loan to the small business and any other
35 funds received from the office that are not disbursed. The
36 corporation shall be authorized to charge a fee to the small business
37 borrower, in an amount determined by the executive director
38 pursuant to regulation. The program provided for in this subdivision
39 shall be available in all geographic areas of the state.

CHAPTER 8. ~~DISASTER LOAN GUARANTEES~~

~~200030. (a) A corporation may, in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture, or declared to be in a state of emergency by the Governor of California, provide loan guarantees from funds allocated in Section 200013 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.~~

~~(b) If regulations have not otherwise been adopted, the office may adopt or readopt regulations to implement the loan guarantee program authorized by this section. The office may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (c) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date unless the office complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, as provided in subdivision (c) of Section 11346.1.~~

~~(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the office.~~

CHAPTER 9. ~~ENERGY EFFICIENCY LOANS~~

~~200031. (a) Corporations may grant energy efficiency improvement loans.~~

~~(b) The office shall enter into an agreement with the California Energy Extension Service of the Office of Planning and Research to assist small business owners in reducing their energy costs through low-interest loans and by providing assistance and information.~~

CHAPTER 10. SURETY BONDS

~~200033. In furtherance of the purposes set forth in Section 200001 of this code and Section 14002 of the Corporations Code, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the office and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan, unless and until it determines:~~

~~(a) There is no probability that the loan or other financial assistance would be granted by a financial company under reasonable terms or conditions, and the borrower has demonstrated a reasonable prospect of repayment of the loan.~~

~~(b) The loan proceeds shall be used exclusively in this state.~~

~~(c) The loan qualifies as a small business loan or an employment incentive loan.~~

~~(d) That the borrower has a minimum equity interest in the business as determined by the director.~~

~~(e) As a result of the loan, the jobs generated or retained demonstrate reasonable conformance to the regulations specifying employment criteria.~~

~~200034. (a) In addition to the authority granted by Section 200033, upon approval of the executive director, a corporation may act as guarantor on a surety bond for any small business contractor, including, but not limited to, women, minority, and disabled veteran contractors.~~

~~(b) The provisions of subdivision (a) allowing a corporation to act as a guarantor on surety bonds may be funded through appropriate federal funding sources. Federal funds shall be deposited in the Federal Trust Fund in the State Treasury in accordance with Section 16360, for transfer to the expansion fund.~~

CHAPTER 11. REPORTING

~~200035. (a) Except as otherwise provided in this title, the trust fund account shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the loan criteria under this title. The state shall not be liable or obligated in any way as a result of the allocation of state money to a trust fund account beyond the state money that is allocated and deposited in the fund pursuant to this title, and that is not otherwise withdrawn by the state pursuant to this title.~~

~~(b) A summary of all loans and bonds to which a state guarantee is attached shall be submitted to the executive director upon execution of the loan agreement and periodically thereafter.~~

~~(c) A summary of all loans made by a corporation shall be submitted to the executive director upon execution of the loan agreement and periodically thereafter.~~

~~200036. (a) Annually, not later than January 1 of each year commencing January 1, 2014, the executive director shall prepare a report regarding the loss experience for the expansion fund for loan guarantees, loss reserves, and surety bond guarantees for the preceding fiscal year. At a minimum, the report shall also include data regarding numbers of surety bond and loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The report shall include the information described in Section 200025. The executive director shall submit that report to the Governor and the Legislature pursuant to Section 9795.~~

~~(b) A corporation shall also report to the executive director, or his or her designated representative, all statistical and other reports required by this title, responses to audit reports, budget requirements, invoices submitted for payment by the state, and information concerning loans made or guaranteed.~~

~~200037. Pursuant to subdivision (f) of Section 8684.2, within 60 days of the conclusion of the period for guaranteeing loans under any small business disaster loan guarantee program conducted for a disaster as authorized by Section 8684.2 or 200030, the office shall provide a report to the Legislature on loan guarantees approved and rejected by gender, ethnic group, type of business and location, and each participating loan institution~~

~~pursuant to Section 9795. The office need only submit one report to comply with this section and subdivision (f) of Section 8684.2.~~

SEC. 3. Chapter 6 (commencing with Section 63088) is added to Division 1 of Title 6.7 of the Government Code, to read:

*CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF
2013*

Article 1. Introduction

63088. This chapter shall be known, and may be cited, as the Small Business Financial Assistance Act of 2013.

63088.1. The Legislature finds all of the following:

(a) Small businesses form the core of the California economy and that it is in the interest of the state to increase opportunities for entrepreneurs, the self-employed, and microbusiness and small business owners to have better access to capital and other technical resources.

(b) Unemployment in California is a matter of statewide concern requiring concerted public and private action to develop employment opportunities for the disadvantaged, unemployed persons, veterans, and youth.

(c) It is necessary to direct additional capital, general management assistance, business education, and other resources to encourage the development of small business opportunities, particularly for minorities, women, and disabled persons, to alleviate unemployment.

Article 2. Definitions

63088.3. Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter.

(a) "Bank" means the California Infrastructure and Economic Development Bank.

(b) "Bank board" means the board of directors of the California Infrastructure and Economic Development Bank.

(c) "Board" means the California Small Business Board.

(d) "Corporation" means any nonprofit California small business financial development corporation created pursuant to

1 *Chapter 1 (commencing with Section 14000) of Part 5 of Division*
2 *3 of Title 1 of the Corporations Code.*

3 (e) “Employment incentive loan” means a loan to a qualified
4 business or to a business located within an enterprise zone, as
5 defined in subdivision (d) of Section 7072.

6 (f) “Executive director” means the executive director of the
7 Infrastructure and Economic Development Bank.

8 (g) “Expansion fund” means the California Small Business
9 Expansion Fund.

10 (h) “Financial company” means banking organizations,
11 including national banks and trust companies, savings and loan
12 associations, certified community development financial
13 institutions, microlenders, state insurance companies, mutual
14 insurance companies, and other public and private banking,
15 lending, retirement, and insurance organizations.

16 (i) “Financial institution” means regulated banking
17 organizations, including national banks and trust companies
18 authorized to conduct business in California and state-chartered
19 commercial banks, trust companies, credit unions, and savings
20 and loan associations.

21 (j) “Loan committee” means a committee appointed by the
22 board of directors of a corporation to determine the course of
23 action on a loan application pursuant to this title.

24 (k) “Program manager” means the person designated to this
25 title by the executive director of the California Infrastructure and
26 Economic Development Bank.

27 (l) Unless otherwise defined by the executive director by
28 regulation, “small business loan” means a loan to a business
29 defined as an eligible small business as set forth in Section
30 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of
31 Federal Regulations, including those businesses organized for
32 agricultural purposes that create or retain employment as a result
33 of the loan. From time to time, the executive director shall provide
34 guidelines as to the preferred ratio of jobs created or retained to
35 total funds borrowed for guidance to the corporations.

36 (m) “Trust fund” means the moneys from the expansion fund
37 that is held in trust by a financial institution or financial company.
38 A trust fund is not a deposit of state funds and is not subject to the
39 requirements of Section 16506.

1 (n) “Trustee” means the lending institution or financial company
2 selected by the office to hold and invest the trust funds. An
3 agreement made pursuant to this title and the trustee shall not be
4 construed to be a deposit of state funds.

5 (o) “Trust fund account” means an account within the trust
6 fund that is allocated to a particular small business financial
7 development corporation for the purpose of paying loan defaults
8 and claims on bond guarantees for a specific small business
9 financial development corporation.

10
11 Article 3. Program Purpose
12

13 63088.5. (a) There is within the Governor’s Office of Business
14 and Economic Development the California Infrastructure and
15 Economic Development Bank, which shall, among other things,
16 assist businesses seeking new capital resources.

17 (b) Pursuant to this title, the bank may establish one or more
18 programs administered regionally under contract with small
19 business financial development corporations. Programs established
20 pursuant to this title may include the following types of financial
21 products:

22 (1) Loan guarantees.

23 (2) Direct loans.

24 (3) Disaster assistance loans.

25 (4) Surety bond guarantees.

26 (c) In all of their state-funded programs, the corporations shall,
27 to the extent practicable, be complementary to, and not competitive
28 with, commercial lenders and other state and federal programs.

29 (d) In carrying out this chapter the bank may call on the
30 California Small Business Board for advice and recommendations.
31 All actions by the California Small Business Board are advisory
32 except where specifically assigned a duty and authority.

33 (e) The Small Business Board may also advise the Governor,
34 the director, and the Small Business Advocate regarding issues
35 and programs affecting California’s small business community,
36 including, but not limited to, business innovation and expansion,
37 export finance, state procurement, management and technical
38 assistance, venture capital, and financial assistance.

1 63088.6. *To implement its responsibilities, a corporation shall*
2 *undertake a program that shall include, but not be limited to, the*
3 *following:*

4 (a) *Outreach to low-resource small businesses and*
5 *microbusinesses. The corporations located in rural areas shall*
6 *give priority to low-resource farmers and rural and agriculturally*
7 *related businesses.*

8 (b) *Collaboration with other organizations and lenders to*
9 *identify and assist those businesses that are creditworthy but face*
10 *impediments to accessing conventional sources because of reasons,*
11 *such as low equity, inadequate collateral, unacceptable legal*
12 *structure (such as a co-op or nonprofit organization), management*
13 *inadequacies, and language problems.*

14 (c) *To the extent possible, bringing all possible financial*
15 *resources (low-interest lenders, BIDCOs, MESBICs, other*
16 *guarantors, etc.) to bear on the borrower's problems.*

17 (d) *Technical assistance to businesses receiving loans or*
18 *guarantees that will maximize the probability of loan repayment.*

19 (e) *Ongoing strategies for increasing program resources*
20 *through private sector involvement and nonstate funds.*

21 (f) *A program for collecting and liquidating defaulted loans so*
22 *that the corporations can qualify to become full-service lenders*
23 *under the Small Business Administration. Corporations located*
24 *in rural areas shall, in addition, try to qualify for lender status*
25 *under the United States Department of Agriculture's Rural*
26 *Development and Farm Services Agency.*

27 (g) *Become an agent for other financial institutions and financial*
28 *companies.*

29
30 Article 4. *Administrative Structure*

31
32 63089. *If regulations have not already been adopted under*
33 *Chapter 1 (commencing with Section 14000) of Part 5 of Division*
34 *3 of Title 1 of the Corporations Code, as that chapter read on*
35 *January 1, 2013, then the bank shall adopt regulations concerning*
36 *the implementation of this title, Chapter 1 (commencing with*
37 *Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations*
38 *Code, and direct lending as emergency regulations in accordance*
39 *with Chapter 3.5 (commencing with Section 11340) of Part 1 of*
40 *Division 3 of Title 2. The adoption of these regulations is an*

1 *emergency and necessary for the immediate preservation of the*
2 *public peace, health and safety, or general welfare within the*
3 *meaning of subdivision (b) of Section 11346.1. Notwithstanding*
4 *subdivision (e) of Section 11346.1, the regulations shall not remain*
5 *in effect for more than 180 days unless the office complies with*
6 *all provisions of Chapter 3.5 (commencing with Section 11340)*
7 *of Part 1 of Division 3 of Title 2, as required by subdivision (e) of*
8 *Section 11346.1. This section also applies to any direct loan*
9 *program administered by the bank.*

10 *63089.1. The program manager shall do all of the following:*

11 *(a) Administer this chapter.*

12 *(b) Contract for services under this chapter and Chapter 1*
13 *(commencing with Section 14000) of Part 5 of Division 3 of Title*
14 *1 of the Corporations Code.*

15 *(c) In accordance with available resources, use branch offices*
16 *for the purposes of making these programs under this chapter*
17 *accessible to all areas of the state.*

18 *(d) Require each corporation to submit an annual written plan*
19 *of operation.*

20 *(e) Authorize the distribution, transfer, and withholding of*
21 *moneys in the expansion fund and trust funds.*

22 *(f) Authorize the investment of expansion and trust fund moneys.*

23 *(g) Oversee the operations of one or more programs authorized*
24 *pursuant to this title.*

25 *(h) Approve, suspend, or terminate a corporation's ability to*
26 *participate in a program under this title.*

27 *63089.2. The use of state funds paid out to the trust fund and*
28 *the return on those funds from investment pursuant to Section*
29 *63089.56 is conditional pursuant to Sections 63089.3 and*
30 *63089.57. Each corporation shall enter into a written signed*
31 *agreement with the state at the beginning of each fiscal year. The*
32 *agreement shall govern the activities in which the corporations*
33 *engage, the investment of state funds and its return, and the*
34 *budgeted administrative expenses the corporations may incur. In*
35 *the event the state and corporation do not reach an agreement, or*
36 *the state finds the corporation has violated the terms of an active*
37 *agreement, the state may take any action under Section 63089.3*
38 *or 63089.57, or any other action as appropriate. In the event the*
39 *state and corporation do not reach agreement or the state finds*
40 *the corporation has violated the terms of an active agreement, the*

1 corporation shall have no authority to withdraw or encumber the
2 trust fund or the return of those funds by the issuance of
3 guarantees, by incurring expenses against the fund and its return
4 in any manner whatsoever, and the state may take any action under
5 Section 63089.3 or 63089.57, or any other action as appropriate.
6 Any guarantee or other encumbrance made by the corporation in
7 violation of this section shall be null and void, and neither the
8 state nor the trust fund will be liable therefor.

9 63089.3. (a) Upon a finding by the program manager that
10 irreparable harm may occur if guarantee or direct loan authority
11 is not temporarily withdrawn from a corporation, the program
12 manager may temporarily withdraw guarantee or direct loan, or
13 both, authority from a corporation. The notice of temporary
14 withdrawal sent to the corporation shall specify the reasons for
15 the action.

16 (1) As used in this section, “guarantee and direct loan
17 authority” means the authority to make or guarantee any loan that
18 encumbers funds in a trust fund account, any account or
19 subaccount under the direct control of the office or other state
20 entity, or the expansion fund.

21 (2) The program manager shall make one of the determinations
22 specified in subdivision (c) within 30 days of the effective date of
23 the temporary withdrawal, unless the corporation and the executive
24 director mutually agree to an extension. The corporation shall
25 have the opportunity to submit written material to the program
26 manager addressing the items stated in the temporary withdrawal
27 notice. If the program manager does not make any determinations
28 within 30 days, the temporary withdrawal shall be negated. The
29 corporation’s yearly contract shall remain in effect during the
30 period of temporary withdrawal, and the corporation shall continue
31 to receive reimbursement of necessary operating expenses.

32 (b) Failure of a corporation to substantially comply with the
33 following may result in the suspension of a corporation:

34 (1) Regulations implementing the California Small Business
35 Development Corporation Law (Chapter 1 (commencing with
36 Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations
37 Code).

38 (2) Fiscal and portfolio requirements, as contained in the fiscal
39 and portfolio audits specified in Section 14004 of the Corporations
40 Code.

1 (3) *Milestones and scope of work as contained in the annual*
2 *contract between the corporation and the office.*

3 (c) *Pursuant to subdivision (a) or (b), the program manager*
4 *may do the following:*

5 (1) *Terminate the temporary withdrawal.*

6 (2) *Terminate the temporary withdrawal subject to the*
7 *corporation's adoption of a specified remedial action plan.*

8 (3) *Temporarily withdraw, or continue to withdraw, guarantee*
9 *authority until a specified time. This determination by the program*
10 *manager shall require a finding that the corporation has failed to*
11 *comply with the California Small Business Development*
12 *Corporation Law (Chapter 1 (commencing with Section 14000)*
13 *of Part 5 of Division 3 of Title 1 of the Corporations Code).*

14 (4) *Suspend the corporation.*

15 (5) *Suspend the corporation, with suspension stayed until the*
16 *corporation provides a remedial action plan to the executive*
17 *director, and the executive director decides whether to repeal or*
18 *implement the stayed suspension.*

19 (d) *The determinations contained in paragraphs (4) and (5) of*
20 *subdivision (c) require a finding that irreparable harm will occur*
21 *unless the corporation is suspended.*

22 (e) *In considering a determination regarding the recommended*
23 *suspension and possible remedial action plans, the program*
24 *manager shall consider, along with other criteria as specified in*
25 *subdivision (b), the corporation's history and past performance.*

26 (f) *Upon suspension of a corporation, the program manager*
27 *shall transfer all funds, whether encumbered or not, in the trust*
28 *fund account of the suspended corporation into either the*
29 *expansion fund or temporarily transfer the funds to another*
30 *corporation.*

31 (g) *If the program manager decides to take any action against*
32 *the corporation pursuant to paragraphs (2) to (5), inclusive, of*
33 *subdivision (c), the corporation shall be notified of the action 10*
34 *days before the effective date of the action. The corporation shall*
35 *have the right to appeal the program manager's decision to the*
36 *director of the California Small Business Board within that 10-day*
37 *period by sending notice to the executive director. Once the*
38 *executive director receives notice that the action is being appealed,*
39 *the program manager's action shall be stayed except for temporary*
40 *withdrawal of guarantee authority. Upon receipt of the notice from*

1 *the corporation, the executive director shall notify the small*
2 *business board within three working days. The California Small*
3 *Business Board shall consider and make a final determination on*
4 *the appeal within 30 days of receiving notice. The small business*
5 *board may elect to take any of the actions listed in subdivision (h).*
6 *The temporary withdrawal of corporation guarantee authority*
7 *shall remain in effect until the executive director small business*
8 *board issues a decision.*

9 *(h) Pursuant to subdivision (g), the small business board may*
10 *do any of the following:*

11 *(1) Terminate the action taken by the program manager.*

12 *(2) Modify the action taken by the program manager subject to*
13 *the adoption by the corporation of a specified remedial action*
14 *plan.*

15 *(3) Affirm the action taken by the program manager.*

16 *(i) Following suspension, the corporation may continue its*
17 *existence as a nonprofit corporation pursuant to the Nonprofit*
18 *Public Benefit Corporation Law (Part 2 (commencing with Section*
19 *5110) of Division 2 of Title 1 of the Corporations Code), but shall*
20 *no longer be registered with the Secretary of State as a small*
21 *business financial development corporation. A corporation shall*
22 *not enjoy any of the benefits of a small business financial*
23 *development corporation following suspension.*

24 *(j) The funds in the trust fund account of a corporation under*
25 *temporary withdrawal shall be transferred to the expansion fund.*
26 *Upon termination of the temporary withdrawal, unless the*
27 *termination is caused by suspension, the funds of the corporation*
28 *that were transferred to the expansion fund from the trust fund*
29 *account shall be returned to the corporation's trust fund account,*
30 *notwithstanding Section 63089.53. While the funds of a*
31 *corporation's trust fund account reside in the expansion fund, use*
32 *of the principal on the funds shall be governed by the implementing*
33 *regulations specifying use of funds in the expansion fund. Interest*
34 *on the funds moved from a corporation's trust fund account upon*
35 *temporary withdrawal shall be limited to payment of the*
36 *corporation's administrative expenses, as contained in the contract*
37 *between the corporation and the state pursuant to this title.*

Article 5. Expansion Fund

63089.5. (a) *There is hereby continued in existence in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds.*

(b) *The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to this title, surety bond losses, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee.*

(c) *The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government moneys, and other public or private money to make loans, guarantees, and restricted investments pursuant to this title.*

(d) *One or more accounts may be created by the program manager for corporations participating in one or more programs authorized under this title. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation.*

(e) *The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.*

(f) *This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.*

63089.51. (a) *All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years, for the purposes of this title.*

(b) *Except as specified in subdivision (a) of Section 63089.53, the state shall not be liable or obligated in any way beyond the state money that is allocated in the expansion fund from moneys from the General Fund moneys appropriated for those purposes.*

63089.52. (a) *The program manager at his or her discretion, with the approval of the Director of Finance, may request the*

1 trustee to invest those funds in the trust fund in any of the securities
2 described in Section 16430. Returns from these investments shall
3 be deposited in the expansion fund and shall be used to support
4 the programs of this title.

5 (b) Any investments made in securities described in Section
6 16430 shall be governed by the statement of investment policy
7 prepared by the Treasurer pursuant to subdivision (a) of Section
8 16481.2.

9 63089.53. (a) The state shall not be liable or obligated in any
10 way beyond the money that is allocated and deposited in the
11 corporation's trust fund account.

12 (b) The program manager may reallocate funds held within a
13 corporation's trust fund account.

14 (1) The program manager shall reallocate funds based on which
15 corporation is most effectively using its guarantee funds. If funds
16 are withdrawn from a less effective corporation as part of a
17 reallocation, the program manager shall make that withdrawal
18 only after giving consideration to that corporation's fiscal
19 solvency, its ability to honor loan guarantee defaults, and its ability
20 to maintain a viable presence within the region it serves.
21 Reallocation of funds shall occur no more frequently than once
22 per fiscal year. Any decision made by the program manager
23 pursuant to this subdivision may be appealed to the bank board
24 unless otherwise specified. The program manager has the authority
25 to repeal or modify any decision to reallocate funds.

26 (2) The program manager may authorize a corporation to
27 exceed the leverage ratio specified in Section 63089.5 or
28 subdivision (a) of Section 63089.66, or subdivision (c) of Section
29 14017 of the Corporations Code, pending the annual reallocation
30 of funds pursuant to this section. However, no corporation shall
31 be permitted to exceed an outstanding guarantee liability of more
32 than five times its portion of funds on deposit in the expansion
33 fund.

34 63089.54. (a) There is hereby created in the State Treasury
35 the Small Business Disaster Recovery Loan Loss Reserve Account,
36 as part of the expansion fund. This account shall be used to pay
37 for unrecovered losses resulting from loan guarantees issued
38 pursuant to subdivision (a) of Section 63089.90 or subdivision (b)
39 of this section, and disaster loan guarantees issued prior to the
40 effective date of this section that are in default.

1 (b) Any lending institution that issues a low-interest loan that
2 is guaranteed by resources in this account shall be fully reimbursed
3 for the guaranteed portion of principal and interest that result
4 from a loan or loans that are in default. If there are insufficient
5 funds in this account to fully satisfy all claimants, the full faith of
6 the resources in the General Fund are pledged to satisfy the
7 obligations of this account. This account may only guarantee as
8 much loan dollar value as is specifically authorized by the Director
9 of Finance with the concurrence of the Governor. This account
10 shall receive all moneys transferred pursuant to Section 63089.55,
11 and any unencumbered balances transferred to the California
12 Small Business Expansion Fund pursuant to Chapters 11 and 12
13 of the First Extraordinary Session of the Statutes of 1989, and
14 Chapter 1525 of the Statutes of 1990, as of July 1, 1992.

15 (c) The Governor may utilize this authority to prevent business
16 insolvencies and loss of employment in an area affected by a state
17 of emergency within the state and declared a disaster by the
18 President of the United States, by the Administrator of the United
19 States Small Business Administration, or by the United States
20 Secretary of Agriculture, or declared to be in a state of emergency
21 by the Governor of California.

22 63089.55. The Director of Finance, with the approval of the
23 Governor, may transfer moneys in the Special Fund for Economic
24 Uncertainties to the California Small Business Expansion Fund
25 for use as authorized by the bank board, in an amount necessary
26 to make loan guarantees pursuant to this title.

27 63089.56. (a) The funds in the expansion fund shall be paid
28 out to trust fund accounts by the Treasurer on warrants drawn by
29 the Controller and requisitioned by the executive director, pursuant
30 to the purposes of this title. The program manager may transfer
31 funds allocated from the expansion fund to accounts, established
32 solely to receive the funds, in lending institutions designated by
33 the office to act as trustee. The lending institutions so designated
34 shall be approved by the state for the receipt of state deposits.
35 Interest earned on the trust fund accounts in lending institutions
36 may be utilized by the corporations pursuant to the purposes of
37 this title.

38 (b) Except as specified in subdivision (d), the program manager
39 shall allocate and transfer money to trust fund accounts based on

1 *performance-based criteria. The criteria shall include, but not be*
2 *limited to, the following:*

3 *(1) The default record of the corporation.*

4 *(2) The number and amount of loans guaranteed by a*
5 *corporation.*

6 *(3) The number and amount of loans made by a corporation if*
7 *state funds were used to make those loans.*

8 *(4) The number and amount of surety bonds guaranteed by a*
9 *corporation.*

10 *(c) Any decision made by the executive director pursuant to*
11 *subdivision (b) may be appealed to the director within 15 days of*
12 *notice of the proposed action. The director may repeal or modify*
13 *any reallocation and transfer decisions made by the executive*
14 *director.*

15 *(d) The criteria specified in subdivision (b) shall not apply to*
16 *a corporation that has been in existence for five years or less. If*
17 *not already adopted, the office shall develop regulations specifying*
18 *the basis for transferring account funds to those corporations that*
19 *have been in existence for five years or less.*

20 *63089.57. Pursuant to this section and any regulations adopted*
21 *pursuant to this title, the state has residual interest in the funds*
22 *deposited by the state to a trust fund account and to the return on*
23 *these funds from investments. On dissolution or suspension of the*
24 *corporation, these funds shall be withdrawn by the executive*
25 *director from the trust fund account and returned to the expansion*
26 *fund or temporarily transferred to another trust fund account. This*
27 *provision shall be contained in the trust instructions to the trustee.*

28 *63089.58. Each trust fund account shall consist of a loan*
29 *guarantee account, and, upon recommendation by the program*
30 *manager, a bond guarantee account, each of which is a legally*
31 *separate account, and the assets of one account shall not be used*
32 *to satisfy loan guarantees or other obligations of another*
33 *corporation. Not more than one-third of a trust fund account shall*
34 *be allocated to a bond guarantee account. A corporation shall not*
35 *use trust fund accounts to secure a corporate indebtedness. State*
36 *funds deposited in the trust fund accounts, with the exception of*
37 *guarantees established pursuant to this title, shall not be subject*
38 *to liens or encumbrances of the corporation or its creditors.*

39 *63089.59. (a) The financial institution that is to act as trustee*
40 *of the trust fund shall be designated after review by the program*

1 *manager. The corporation shall not receive money on deposit to*
2 *support guarantees issued under this title without the approval of*
3 *the program manager.*

4 *(b) State funds may not be used to finance an expense incurred*
5 *by a corporation in a location not approved pursuant to a statewide*
6 *plan. The prohibition against use of state funds also applies to the*
7 *location of satellite offices, and the area served from a corporation*
8 *office.*

9
10 *CHAPTER 6. GUARANTEE PROGRAM*
11

12 *63089.61. (a) The Small Business Loan Guarantee Program,*
13 *which is hereby continued in existence, shall provide guarantees*
14 *to loans offered by financial institutions to small businesses.*

15 *(b) The Legislature finds and declares that the Small Business*
16 *Loan Guarantee Program has enabled participating small*
17 *businesses that do not qualify for conventional business loans or*
18 *Small Business Administration loans to secure funds to expand*
19 *their businesses. These small businesses would not have been able*
20 *to expand their businesses in the absence of the program. The*
21 *program has also provided valuable technical assistance to small*
22 *businesses to ensure growth and stability. The study commissioned*
23 *by former Section 14069.6 of the Corporations Code, as added by*
24 *Chapter 919 of the Statutes of 1997, documented the return on*
25 *investment of the program and the need for its services. The value*
26 *of the program has also been recognized by the Governor through*
27 *proposals contained in the May Revision to the Budget Act of 2000*
28 *for the 2000–01 fiscal year.*

29 *63089.62. The program manager, following notification to the*
30 *bank director, may do all of the following:*

- 31 *(a) Contract for services entered into pursuant to this title.*
32 *(b) Hold public hearings.*
33 *(c) Act as liaison between corporations, other state and federal*
34 *agencies, lenders, and the Legislature.*
35 *(d) Process and tabulate on a monthly basis all corporate*
36 *reports.*
37 *(e) Attend board meetings.*
38 *(f) Attend and participate at corporation meetings. The program*
39 *manager, or his or her designee, shall be an ex officio, nonvoting*
40 *representative on the board of directors and loan committees of*

1 *each corporation. The program manager shall meet with the board*
2 *of directors of each corporation at least once each fiscal year.*

3 *(g) Assist corporations in applying for public and private*
4 *funding opportunities, and in obtaining program support from the*
5 *business community.*

6 *63089.63. (a) The program manager shall recommend whether*
7 *the expansion fund and trust fund accounts are to be leveraged,*
8 *and if so, by how much. Upon the request of the corporation, the*
9 *program manager's decision may be repealed or modified by a*
10 *bank board resolution.*

11 *(b) The amount of guarantee liability outstanding at any one*
12 *time shall not exceed five times the amount of funds on deposit in*
13 *the expansion fund plus any receivables due from funds loaned*
14 *from the expansion fund to another fund in state government as*
15 *directed by the Department of Finance pursuant to a statute*
16 *enacted by the Legislature, including each of the trust fund*
17 *accounts within the trust fund.*

18 *(c) This section shall remain in effect only until January 1, 2018,*
19 *and as of that date is repealed, unless a later enacted statute, that*
20 *is enacted before January 1, 2018, deletes or extends that date.*

21 *63089.63. (a) The program manager shall recommend whether*
22 *the expansion fund and trust fund accounts are to be leveraged,*
23 *and if so, by how much. Upon the request of the corporation, the*
24 *program manager's decision may be repealed or modified by an*
25 *office resolution.*

26 *(b) The amount of guarantee liability outstanding at any one*
27 *time shall not exceed four times the amount of funds on deposit in*
28 *the expansion fund plus any receivables due from funds loaned*
29 *from the expansion fund to another fund in state government as*
30 *directed by the Department of Finance pursuant to a statute*
31 *enacted by the Legislature, including each of the trust fund*
32 *accounts within the trust fund, unless the program manager has*
33 *permitted a higher leverage ratio for an individual corporation*
34 *pursuant to subdivision (b) of Section 63089.53.*

35 *(c) This section shall become operative on January 1, 2018.*

36 *63089.64. (a) The corporate guarantee shall be backed by*
37 *funds on deposit in the corporation's trust fund account, or by*
38 *receivables due from funds loaned from the corporation's trust*
39 *fund account to another fund in state government, as directed by*

1 *the Department of Finance pursuant to a statute enacted by the*
2 *Legislature.*

3 *(b) Loan guarantees shall be secured by a reserve of at least*
4 *20 percent to be determined by the executive director.*

5 *(c) The expansion fund and trust fund accounts shall be used*
6 *exclusively to guarantee obligations and pay the administrative*
7 *costs of the corporations.*

8 *(d) This section shall remain in effect only until January 1, 2018,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2018, deletes or extends that date.*

11 63089.64. *(a) The corporate guarantee shall be backed by*
12 *funds on deposit in the corporation's trust fund account, or by*
13 *receivables due from funds loaned from the corporation's trust*
14 *fund account to another fund in state government, as directed by*
15 *the Department of Finance pursuant to a statute enacted by the*
16 *Legislature.*

17 *(b) Loan guarantees shall be secured by a reserve of at least*
18 *25 percent to be determined by the executive director, unless the*
19 *executive director authorizes a higher leverage ratio for an*
20 *individual corporation pursuant to subdivision (b) of Section*
21 *63089.53.*

22 *(c) The expansion fund and trust fund accounts shall be used*
23 *exclusively to guarantee obligations and pay the administrative*
24 *costs of the corporations.*

25 *(d) This section shall become operative on January 1, 2018.*

26 63089.65. *A corporation may charge the borrower or financial*
27 *institution a loan fee on all loans made or guaranteed by the*
28 *corporation to defray the operating expenses of the corporation.*
29 *The amount of the fee shall be determined by the program manager.*

30 63089.66. *(a) It is the intent of the Legislature that the*
31 *corporations make maximal use of their statutory authority to*
32 *guarantee loans and surety bonds, including the authority to secure*
33 *loans with a minimum loan loss reserve of only 20 percent, so that*
34 *the financing needs of small business may be met as fully as*
35 *possible within the limits of corporations' loan loss reserves. The*
36 *office shall report annually to the Legislature on the financial*
37 *status of the corporations and their portfolio of loans and surety*
38 *bonds guaranteed pursuant to Section 9795.*

39 *(b) Any corporation that serves an area declared to be in a state*
40 *of emergency by the Governor or a disaster area by the President*

1 of the United States, the Administrator of the United States Small
2 Business Administration, or the United States Secretary of
3 Agriculture shall increase the portfolio of loan guarantees where
4 the dollar amount of the loan is less than one hundred thousand
5 dollars (\$100,000), so that at least 15 percent of the dollar value
6 of loans guaranteed by the corporation is for those loans. The
7 corporation shall comply with this requirement within one year
8 of the date the emergency or disaster is declared. Upon application
9 of a corporation, the executive director may waive or modify the
10 rule for the corporation if the corporation demonstrates that it
11 made a good faith effort to comply and failed to locate lending
12 institutions in the region that the corporation serves that are willing
13 to make guaranteed loans in that amount.

14 (c) This section shall remain in effect only until January 1, 2018,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2018, deletes or extends that date.

17 63089.66. (a) It is the intent of the Legislature that the
18 corporations make maximal use of their statutory authority to
19 guarantee loans and surety bonds, including the authority to secure
20 loans with a minimum loan loss reserve of only 25 percent, unless
21 the office authorizes a higher leverage ratio for an individual
22 corporation pursuant to subdivision (b) of Section 63089.53, so
23 that the financing needs of small business may be met as fully as
24 possible within the limits of corporations' loan loss reserves. The
25 bank shall report annually to the Legislature on the financial status
26 of the corporations and their portfolio of loans and surety bonds
27 guaranteed pursuant to Section 9795.

28 (b) Any corporation that serves an area declared to be in a state
29 of emergency by the Governor or a disaster area by the President
30 of the United States, the Administrator of the United States Small
31 Business Administration, or the United States Secretary of
32 Agriculture shall increase the portfolio of loan guarantees where
33 the dollar amount of the loan is less than one hundred thousand
34 dollars (\$100,000), so that at least 15 percent of the dollar value
35 of loans guaranteed by the corporation is for those loans. The
36 corporation shall comply with this requirement within one year
37 of the date the emergency or disaster is declared. Upon application
38 of a corporation, the program manager may waive or modify the
39 rule for the corporation if the corporation demonstrates that it
40 made a good faith effort to comply and failed to locate lending

1 *institutions in the region that the corporation serves that are willing*
2 *to make guaranteed loans in that amount.*

3 *(c) This section shall become operative on January 1, 2018.*

4 *63089.67. (a) A corporation shall establish one or more loan*
5 *committees, each of which shall be composed of five or more*
6 *persons, a majority of whom shall be experienced in banking and*
7 *lending operations.*

8 *(b) A loan committee shall review applications to the*
9 *corporation for a loan or guarantee and shall do each of the*
10 *following:*

11 *(1) Determine the feasibility of the proposed transaction. The*
12 *loan committee shall recommend approval of the application only*
13 *upon a determination that there is a reasonable chance that the*
14 *loan will be repaid.*

15 *(2) On the basis of that determination, recommend to the board*
16 *of directors any action that the loan committee deems appropriate*
17 *under the circumstances, or, in the event that approval authority*
18 *has been delegated to the loan committee by the board of directors,*
19 *approve or disapprove the loan application.*

20 *(c) A loan committee shall expeditiously act to accept or reject*
21 *loan applications.*

22 *(d) A person who has a financial interest related to a matter*
23 *over which the loan committee has authority may not make,*
24 *participate in making, or in any way attempt to influence that*
25 *matter.*

26 *63089.68. Unless delegated to its loan committee, the*
27 *corporation's board of directors, upon a recommendation from*
28 *its loan committee shall do all of the following:*

29 *(a) Emphasize consideration to applications that will increase*
30 *employment of disadvantaged, disabled, or unemployed persons,*
31 *or increase employment of youth residing in areas of high youth*
32 *unemployment and high youth delinquency.*

33 *(b) Give consideration to applications from traditional and*
34 *safety-net providers of Medi-Cal services that will promote access*
35 *to quality medical care for individuals enrolled in Medi-Cal*
36 *managed health care networks that are contracting with or owned*
37 *or operated by a county board of supervisors, a county health*
38 *commission, or a county health authority organized pursuant to*
39 *Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or*
40 *14087.9605 of the Welfare and Institutions Code.*

1 (c) Not grant a loan or guarantee, unless it determines that the
2 conditions of Section 200033 are satisfied.

3 63089.69. (a) Among other priorities, corporations shall give
4 high priority to the issuance of loan guarantees to small business
5 incubators and to businesses that lease space in incubators.

6 (b) For the purposes of this section, "incubator" means a facility
7 that allows new small businesses to increase their probability of
8 success by sharing needed capital equipment, services, and
9 facilities, which may include, but are not limited to, the following:

10 (1) Reception and meeting area.

11 (2) Secretarial services, such as collating, telephone answering,
12 or mailhandling.

13 (3) Accounting and bookkeeping services.

14 (4) Research libraries.

15 (5) Onsite financial and management counseling.

16 (6) Parking.

17 (7) Flexible lease arrangements for flexible space.

18 (8) Computer or word processing facilities.

19 (9) Day care facilities.

20 (10) Office furniture rentals.

21 (11) A graduation policy sometimes requiring firms to leave
22 after three to five years in a subsidized, nurturing environment.

23 (12) Employee training and placement services.

24 (c) Among other priorities, corporations shall give high priority
25 to marketing their services to Phase 1 or Phase 2 Small Business
26 Innovation Research (SBIR) recipients and providing loan
27 guarantees, whenever possible.

28
29 CHAPTER 7. DIRECT LENDING
30

31 63089.80. (a) A corporation may utilize funds for direct
32 lending as long as at least 80 percent of the corporate funds,
33 calculated by dollar amount, and all expansion funds are
34 guaranteed by another public or private financial institution.

35 (b) The amount of funds available for direct lending shall be
36 determined by the program manager. In its capacity as a direct
37 lender, the corporation may sell in the secondary market the
38 guaranteed portion of each loan so as to raise additional funds
39 for direct lending. The office shall issue regulations governing
40 these direct loans, including the maximum amount of these loans.

1 (c) To execute the direct loan programs established in this
2 chapter, the program manager may loan trust funds to a
3 corporation located in a rural area for the express purpose of
4 lending those funds to an identified borrower. The loan authorized
5 by the program manager to the corporation shall be on terms
6 similar to the loan between the corporation and the borrower.

7 (d) The amount of the loan may be in excess of the amount of a
8 loan to any individual borrower, but actual disbursements pursuant
9 to the office loan agreement shall be required to be supported by
10 a loan agreement between the borrower and the corporation in
11 an amount at least equal to the requested disbursement. The loan
12 between the bank and the corporation shall be evidenced by a
13 credit agreement. In the event that any loan between the
14 corporation and borrower is not guaranteed by a governmental
15 agency, the portion of the credit agreement attributable to that
16 loan shall be secured by assignment of any note, executed in favor
17 of the corporation by the borrower to the bank. The terms and
18 conditions of the credit agreement shall be similar to the loan
19 agreement between the corporation and the borrower, which shall
20 be collateralized by the note between the corporation and the
21 borrower.

22 (e) In the absence of fraud on the part of the corporation, the
23 liability of the corporation to repay the loan to the bank is limited
24 to the repayment received by the corporation from the borrower,
25 except in a case where the United States Department of Agriculture
26 requires exposure by the corporation in rule or regulation. The
27 corporation may use trust funds for loan repayment to the office
28 if the corporation has exhausted a loan loss reserve created for
29 this purpose. Interest and principal received by the office from the
30 corporation shall be deposited into the same account from which
31 the funds were originally borrowed.

32 (f) Upon the approval of the program manager, a corporation
33 shall be authorized to borrow trust funds from the bank for the
34 purpose of relending those funds to small businesses. A corporation
35 shall demonstrate to the program manager that it has the capacity
36 to administer a direct loan program, and has procedures in place
37 to limit the default rate for loans to startup businesses. Not more
38 than 25 percent of any trust fund account shall be used for the
39 direct lending established pursuant to this subdivision. A loan to
40 a corporation shall not exceed the amount of funds likely to be

1 *lent to small businesses within three months following the loan to*
2 *the corporation.*

3 *(g) The maximum loan amount to a small business shall be set*
4 *by the program manager, but in no case shall it be more than three*
5 *hundred thousand dollars (\$300,000). In the absence of fraud on*
6 *the part of the corporation, the repayment obligation pursuant to*
7 *the loan to the corporation shall be limited to the amount of funds*
8 *received by the corporation for the loan to the small business and*
9 *any other funds received from the office that are not disbursed.*
10 *The corporation shall be authorized to charge a fee to the small*
11 *business borrower, in an amount determined by the executive*
12 *director pursuant to regulation. The program provided for in this*
13 *subdivision shall be available in all geographic areas of the state.*

14
15 *CHAPTER 8. DISASTER LOAN GUARANTEES*
16

17 *63089.90. (a) A corporation may, in an area affected by a*
18 *state of emergency within the state and declared a disaster by the*
19 *President of the United States, the Administrator of the United*
20 *States Small Business Administration, or the United States*
21 *Secretary of Agriculture, or declared to be in a state of emergency*
22 *by the Governor of California, provide loan guarantees from funds*
23 *allocated in Section 63089.55 to small businesses, small farms,*
24 *nurseries, and agriculture-related enterprises that have suffered*
25 *actual physical damage or significant economic injury as a result*
26 *of the disaster.*

27 *(b) If regulations have not otherwise been adopted, the bank*
28 *board may adopt or readopt regulations to implement the loan*
29 *guarantee program authorized by this section. The bank board*
30 *may adopt these regulations as emergency regulations in*
31 *accordance with Chapter 3.5 (commencing with Section 11340)*
32 *of Part 1 of Division 3 of Title 2, and for purposes of that chapter,*
33 *including Section 11349.6, the adoption of the regulations shall*
34 *be considered by the Office of Administrative Law to be necessary*
35 *for the immediate preservation of the public peace, health and*
36 *safety, and general welfare. Notwithstanding subdivision (e) of*
37 *Section 11346.1, the regulations shall be repealed within 180 days*
38 *after their effective date unless the office complies with Chapter*
39 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
40 *Title 2, as provided in subdivision (e) of Section 11346.1.*

1 (c) Allocations pursuant to subdivision (a) shall be deemed to
2 be for extraordinary emergency or disaster response operations
3 costs incurred by the office.

4
5 *CHAPTER 9. ENERGY EFFICIENCY LOANS*
6

7 63089.93. (a) Corporations may grant energy efficiency
8 improvement loans.

9 (b) The bank shall enter into an agreement with the California
10 Energy Extension Service of the Office of Planning and Research
11 to assist small business owners in reducing their energy costs
12 through low-interest loans and by providing assistance and
13 information.

14
15 *CHAPTER 10. SURETY BONDS*
16

17 63089.95. In furtherance of the purposes set forth in Section
18 63088.1 of this code and Section 14002 of the Corporations Code,
19 a corporation may do any one or more of the following activities,
20 but only to the extent that the activities are authorized pursuant
21 to the contract between the bank and corporation: guarantee,
22 endorse, or act as surety on the bonds, notes, contracts, or other
23 obligations of, or assist financially, any person, firm, corporation,
24 or association, and may establish and regulate the terms and
25 conditions with respect to any such loans or financial assistance
26 and the charges for interest and service connected therewith, except
27 that the corporation shall not make or guarantee any loan, unless
28 and until it determines:

29 (a) There is no probability that the loan or other financial
30 assistance would be granted by a financial company under
31 reasonable terms or conditions, and the borrower has
32 demonstrated a reasonable prospect of repayment of the loan.

33 (b) The loan proceeds shall be used exclusively in this state.

34 (c) The loan qualifies as a small business loan or an employment
35 incentive loan.

36 (d) That the borrower has a minimum equity interest in the
37 business as determined by the director.

38 (e) As a result of the loan, the jobs generated or retained
39 demonstrate reasonable conformance to the regulations specifying
40 employment criteria.

1 63089.96. (a) *In addition to the authority granted by Section*
2 *63089.95, upon approval of the executive director, a corporation*
3 *may act as guarantor on a surety bond for any small business*
4 *contractor, including, but not limited to, women, minority, and*
5 *disabled veteran contractors.*

6 (b) *The provisions of subdivision (a) allowing a corporation to*
7 *act as a guarantor on surety bonds may be funded through*
8 *appropriate federal funding sources. Federal funds shall be*
9 *deposited in the Federal Trust Fund in the State Treasury in*
10 *accordance with Section 16360, for transfer to the expansion fund.*

11
12 *CHAPTER 11. REPORTING*
13

14 63089.97. (a) *Except as otherwise provided in this title, the*
15 *trust fund account shall be used solely to make loans, guarantee*
16 *bonds, and guarantee loans, approved by the corporation, that*
17 *meet the loan criteria under this chapter. The state shall not be*
18 *liable or obligated in any way as a result of the allocation of state*
19 *moneys to a trust fund account beyond the state moneys that is*
20 *allocated and deposited in the fund pursuant to this title, and that*
21 *is not otherwise withdrawn by the state pursuant to this chapter.*

22 (b) *A summary of all loans and bonds to which a state guarantee*
23 *is attached shall be submitted to the program manager upon*
24 *execution of the loan agreement and periodically thereafter.*

25 (c) *A summary of all loans made by a corporation shall be*
26 *submitted to the program manager upon execution of the loan*
27 *agreement and periodically thereafter.*

28 63089.98. (a) *Annually, not later than January 1 of each year*
29 *commencing January 1, 2014, the program manager shall prepare*
30 *a report regarding the loss experience for the expansion fund for*
31 *loan guarantees, loss reserves, and surety bond guarantees for*
32 *the preceding fiscal year. At a minimum, the report shall also*
33 *include data regarding numbers of surety bond and loan*
34 *guarantees awarded through the expansion fund, including*
35 *ethnicity and gender data of participating contractors and other*
36 *entities, and experience of surety insurer participants in the bond*
37 *guarantee program. The report shall include the information*
38 *described in Section 63089.66. The program manager shall post*
39 *the information on the bank's Internet Web site and submit notice*

1 *report to the Governor and the Legislature when that information*
2 *is available on its Internet Web site.*

3 *(b) A corporation shall also report to the program manager, or*
4 *his or her designated representative, all statistical and other*
5 *reports required by this title, responses to audit reports, budget*
6 *requirements, invoices submitted for payment by the state, and*
7 *information concerning loans made or guaranteed.*

8 *63089.99. Pursuant to subdivision (f) of Section 8684.2, within*
9 *60 days of the conclusion of the period for guaranteeing loans*
10 *under any small business disaster loan guarantee program*
11 *conducted for a disaster as authorized by Section 8684.2 or*
12 *200030, the bank shall provide a report to the Legislature on loan*
13 *guarantees approved and rejected by gender, ethnic group, type*
14 *of business and location, and each participating loan institution*
15 *pursuant to Section 9795. The bank need only submit one report*
16 *to comply with this section and subdivision (f) of Section 8684.2.*

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.